

U.S. COURTS

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF IDAHO 39

IN RE: )  
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SAWTOOTH ENTERPRISES, INC. )  
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 )  
 )  
 )  
DEBTOR(S) )

CHAPTER 11

CASE NO. 96-03050

OPPOSITION TO MOTION FOR  
ENTRY OF ORDER APPROVING SALE  
OF PROPERTY FREE AND CLEAR  
OF LIENS

REC'D FILED *dh*  
CAMERON S. BURKE  
CLERK U.S. COURT

TO THE ABOVE-NAMED COURT, THE DEBTOR, AND U.S. TRUSTEE:

COMES NOW, the undersigned, AUSTIN STEWART ("CLAIMANT"), in opposition to Debtor SAWTOOTH ENTERPRISES, INC.'s ("DEBTOR") MOTION FOR ENTRY OF ORDER APPROVING SALE OF PROPERTY FREE AND CLEAR OF LIENS ("DEBTOR's motion"). CLAIMANT opposes DEBTOR's motion on the grounds that the proposed disposition of sale proceeds with respect to property owned by CLAIMANT, property which is the subject of CLAIMANT's sec. 362(d) motion of December 10, 1996, does not adequately protect CLAIMANT's interest in said property or ensure that CLAIMANT's obligation with respect to said property will be fully satisfied.

By the terms of the proposed sale of DEBTOR's assets, US BANK, lienholder of CLAIMANT's assets in DEBTOR's possession, will receive 6.4% of any remaining sale proceeds after payment of closing costs and at least 45 days worth of delinquent rent payments on DEBTOR's four leases. (See, DEBTOR's motion, p.5-6, para.1-6(b)). Such a disposition does not adequately protect CLAIMANT due to the unspecified amount of closing costs, and the resulting likelihood that 6.4% of remaining proceeds will not satisfy the outstanding amount due and payable to US BANK, approximately \$6,600.

Furthermore, DEBTOR has moved the court for an entry of order approving the sale of this property based on a presumed value of

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\$5,000. (See, DEBTOR's motion p.6, para. 6(b)). Such a value contemplates the possibility that less than \$80,000 will be available to distribute, and CLAIMANT will be liable to US BANK for any deficiency between the actual distribution made and the outstanding amount of CLAIMANT's obligation.


CLAIMANT is the owner of record of this equipment (See, Exhibit "A" to CLAIMANT's MOTION TO LIFT STAY, etc., filed December 10, 1996). CLAIMANT seeks to take possession of the equipment for the purpose of a voluntary repossession, returning it to the dealer for resale to pay off the balance due to US BANK. The equipment is not currently necessary for debtor's reorganization, since debtor has suspended operations, and since none of the equipment is essential in producing debtor's basic product - bagels. Therefore, CLAIMANT is entitled to an order granting possession of the equipment owned by him in order to satisfy his outstanding obligation, or, in the alternative, for an order by the Court for a payment from the proceeds of not less than \$6,500 to US BANK to satisfy all outstanding interest, principal, fees and costs associated with CLAIMANT's loan.

THEREFORE, CLAIMANT requests relief as follows:

For an order rejecting that portion of DEBTOR's motion with respect to CLAIMANT's property;

For an order directing DEBTOR to pay not less than \$6,500 to US BANK from the proceeds of the contemplated sale or, in the alternative, for relief as requested in CLAIMANT's motion of December, 10, 1996;

For any other relief the court deems proper.



Austin E. Stewart, II  
PO Box 6097  
Ketchum, ID 83340  
(208) 726-2009

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of January, 1997, I caused a true and correct copy of the OPPOSITION TO MOTION FOR ENTRY OF ORDER APPROVING SALE OF PROPERTY FREE AND CLEAR OF LIENS to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following person(s):

Joseph m. Meier		Hand Deliver
Cosho, Humphrey, Greener & Welsh	X	U.S. Mail
815 W. Washington		FAX
Boise, ID 83702		Federal Express

Assistant U.S. Trustee		Hand Deliver
PO Box 110	X	U.S. Mail
Boise, ID 83701		FAX
		Federal Express



AUSTIN STEWART